

##### Edgecumbe Consulting Group Limited

Terms of business

These terms of business (Terms), along with the attached invoice and/or your payment form the contract between you and us. Where we say you, yourself or your in these Terms we refer to the client identified on the invoice and where we say we, us or our we mean Edgecumbe Consulting Group Limited, a company registered in England with registered address Whitefriars, Lewins Mead, Bristol BS1 2NT and company number 03033236. Edgecumbe Health is one of our trading names.

Please note that specific terms of business may be agreed within a separate contract for organisation -based agreements.

1. Correspondence and invoice

The correspondence we have had with you and the invoice, PayPal or Stripe payment identifies the requirements you have told us about and the scope of work we will deliver to you. You must let us know promptly if you think anything on the invoice is inaccurate.

2. Who will perform services for you

Our services may be performed by any of our directors, employees, contractors or agents (our Personnel). We will always ensure that Personnel of the right qualification and seniority are engaged in the performance of the services. However, we will have discretion to decide which of our Personnel perform the services.

3. Payment flow and delivery policy

Payments for Edgecumbe administrated 360 feedback exercises are to be made via our [website order page.](https://www.edgecumbe.co.uk/partners/buy-online/) (As opposed to volume orders from organisations).

We will invite the participant(s) you have specified to start their 360-feedback exercise(s) within 2 working days of receipt of full payment for the services ordered. The invitation will be sent via email from [support@edgecumbe.co.uk](mailto:support@edgecumbe.co.uk?subject=New%20Website%20Enquiry) to the participant email address that you have entered on the order page.

4. Our fees

Our website and/or correspondence sets out our fees. These may be specified as an estimate, as a fixed fee, or with a formula for calculating them (for example, hourly or daily rates for our Personnel). We will update you regularly on actual fees incurred where we have given you an estimate or a formula for calculating our fees. We review our rates annually and we will let you know what impact, if any, a review has on the amount we will charge you (a review will only impact charges for work additional to that which is set out in this engagement letter, for which the original rates quoted will continue to apply for the original scope of work). There is an administrative charge on invoices for less than 10 feedback licences and for payments made over the phone – these charges are listed on our website ‘Buy Online’ page. Our fees and payment arrangements constitute commercially sensitive information and are confidential.

Invoice requests for orders of under 10 feedback licences will incur an administrative surcharge of £7.50 + VAT (£9). Phone payments will incur an administrative surcharge of £2.08 + VAT (£2.50).

Fees for organisation-based contracts are based on volume orders.

5. Expenses

You must reimburse us for travel from home to any venue by our Personnel where that venue is not their ordinary place of work. Our Personnel will travel by rail or air and use taxis or public transport between the train station or airport and the venue. Where reasonable, our Personnel will use first class travel to a maximum of 115% of the cost of standard travel. If our Personnel use a personal car, we will charge mileage to the venue at 55p per mile. We will charge all other travel and subsistence expenses, including any necessary overnight hotel accommodation and car parking, at cost. We will not be subject to your expenses policy or any expense payment process requirements you may have unless we expressly agree them in a contract or Sales Order.

6. Purchase orders

If your purchase of services from us requires you to issue a purchase order number, you must specify it at the time of ordering. If you would like us to observe any other invoicing arrangements (for example sending copy e-mail invoices to particular recipients) you should let us know and we will endeavour to follow them. If you do not provide a purchase order number, we will send all invoices for the relevant services without a purchase order number. No terms and conditions or other text you purport to have legal effect (including where included on any purchase order you provide to us) shall be binding on us or form part of the contract between you and us.

7. Cancellation and termination

For website orders, if you need to cancel services we have agreed to perform, please email [engaged@edgecumbe.co.uk](mailto:engaged@edgecumbe.co.uk?subject=New%20Website%20Enquiry) with confirmation of the service you would like to cancel, as well as the name and GMC number of the participant and the date that they received their invitation to use the service.

You are entitled to a full or partial refund under the following conditions:

1. Feedback services have not yet been made use of, including any use of the online feedback account and the sending of a patient feedback pack; and
2. You request the refund in writing, within 7 working days of the Doctor 360 feedback exercise being activated.

Either you or we may terminate a contract immediately by serving written notice to that effect on the other if at any time any one or more of the following events occurs:

* (a) the other makes any voluntary arrangement with its creditors or becomes bankrupt or enters administration or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or
* (b) a security holder takes possession, or a receiver or administrative receiver is appointed, over all or any material part of the property or assets of the other; or
* (c) anything analogous to any of the foregoing occurs to the other under the law of any jurisdiction; or
* (d) the other ceases to carry on business; or
* (e) the other commits a material breach of a contract and in the case of a breach capable of remedy, fails to remedy that breach within thirty (30) days after being served with a written notice specifying the breach and requiring it to be remedied.

8. Facilities and equipment

Where a service we have agreed to perform requires a venue you must provide a suitable venue and any equipment at the venue we reasonably specify, along with appropriate refreshments at the venue. You will be responsible for the health and safety of all attendees, including all of our Personnel who attend, and you must ensure our Personnel are covered by adequate public liability insurance whilst they are on your premises or any premises you arrange. You must also perform any client dependencies specified in our correspondence. We reserve the right to make amendments to the question set in the Doctor 360 product during the period of this contract, as and when required, to ensure that the survey remains fit for purpose and meets the requirements of the regulatory bodies governing the appraisal and revalidation system.

9. Intellectual property

For the purposes of these Terms Intellectual Property Rights means all patents, trademarks, service marks, designs, utility models, copyright, database rights, semi-conductor topography rights, inventions, trade secrets and other confidential information, know-how, business names and all other intellectual property rights of a similar nature in any part of the world, whether registered, registrable or not and including all applications and the right to apply for any of the foregoing rights and the right to sue for past infringements of any of the foregoing rights.

As between you and us, we retain all Intellectual Property Rights and other rights in all of our pre-existing materials and will own all Intellectual Property and other rights in the output of any services we provide to you and otherwise created in the performance of any services for you. Provided you pay all charges due to us, we hereby grant to you free of charge and on a perpetual, non-exclusive, non-transferable, worldwide basis the right to use the output of any services we provide to you solely for your internal business services, and the right to use our pre-existing materials solely to the extent necessary to allow you to use the output of the services in accordance with this paragraph. Where our pre-existing materials are software products or services your right to use and access the same will be subject to your agreement to the terms of any applicable end user licence agreement.

As between you and us, you retain all Intellectual Property Rights and other rights in all of your pre-existing materials. You hereby grant us a non-exclusive, worldwide, royalty-free right to use your pre-existing materials to the extent necessary for us to perform the services.

You acknowledge that, where we do not own any of our pre-existing materials, your right to use them is conditional on us obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle usto license or sub-license such rights to you.

10. Limit of liability and Professional Indemnity Insurance

Our aggregate liability to you under our contract with you for all claims, actions or demands brought under or in connection with it (whether by reason of any negligence by us or any of our employees or agents, any non-fraudulent misrepresentation, any breach of contract or an express or implied warranty, condition or other term, or otherwise) shall not exceed the total fee specified in the engagement letter.

We shall not be liable to you (whether by reason of any negligence by us or any of our employees or agents, any non-fraudulent misrepresentation, any breach of contract or an express or implied warranty, condition or other term, or otherwise) for any:

* (a) loss of profits; or
* (b) damage to reputation; or
* (c) loss of anticipated savings; or
* (d) loss of anticipated revenues; or
* (e) loss of business opportunities; or
* (f) loss of contracts; or
* (g) loss of goodwill; or
* (h) loss or corruption of any data; or
* (i) claim, action or demand made against you by any third party; or
* (j) any indirect loss, damage, cost, expense or claim whatsoever; which arises out of or in connection with this agreement.

Nothing in our contract with you shall operate to limit or exclude our liability to you for any death or personal injury caused by the negligence of us or any of our employees or agents, for fraud or fraudulent misrepresentation, or for any other matter in respect of which liability cannot lawfully be limited or excluded. You acknowledge and agree that the exclusions and limitations of liability specified in this paragraph reflect the charges payable to us under our contract with you, your responsibility for applying and interpreting the output of any services we perform for you in your business and are fair and reasonable in all the circumstances.

11. Data protection and storage of information

11.1 For Individual Doctors using the Edgecumbe Dr360 service:

Edgecumbe is a data controller and will comply with any applicable data privacy laws and applicable recommendations by the Information Commissioner’s Office or other competent authorities. The personal data we hold is used to deliver contracted services and products, and only for the stated purpose.

We will retain documents and electronic files relating to the services we perform for you for such period of time as we consider necessary to comply with our legal, audit, and any other regulatory requirements. After this time, we will destroy documents in a secure manor and securely delete electronic files. During the period of storage, we will take all reasonable steps to ensure the documents and electronic files are held securely.

Where through the performance of services we gather data in reports or data sheets we are entitled to use the data for our internal research and our commercial purposes, provided that in doing so we use the data only in an anonymised format and respect any opt-outs from that use by individuals.

11.2 For NHS Trusts and GP Practices using the Edgecumbe Dr360 service for a group of doctors:

Edgecumbe is a data processor and will comply with any applicable data privacy laws and applicable recommendations by the Information Commissioner’s Office or other competent authorities. The personal data we hold is used to deliver contracted services and products, and only for the stated purpose.

We will retain documents and electronic files relating to the services we perform for you in line with the requirements of the data controller, or if the data controller has not provided a deletion policy, we will hold the data until we are requested to delete it. We may also retain certain personal data for such period of time as we consider necessary to comply with our legal, audit, and any other regulatory requirements. During the period of storage, we will take all reasonable steps to ensure the documents and electronic files are held securely.

Where through the performance of services we gather data in reports or data sheets we are entitled to use the data for our internal research and our commercial purposes, provided that in doing so we use the data only in an anonymised format and respect any opt-outs from that use by individuals.

As data processor, where no data processing agreement (DPA) has been provided, we will adhere to the terms set out in our own [DPA](https://www.doctor360.co.uk/wp-content/uploads/Dr360-DPA.docx) to ensure compliance with any applicable data privacy laws and applicable recommendations by the Information Commissioner’s Office or other competent authorities.

**Privacy Statement**

For further details on what information we hold, how we use it and your rights regarding that information, please click [here](https://www.doctor360.co.uk/privacy-statement/) to view our privacy statement.

12. Confidentiality

Each of you and we shall safeguard and keep confidential the terms of contracts and any and all confidential information acquired in relation to the business or affairs of the other party. Neither you nor we shall use or disclose the other’s confidential information except to the extent that such use or disclosure is necessary for the purposes of performing its obligations or exercising its rights under this contract. You and we shall each ensure that its officers and employees and any other persons to whom confidential information is disclosed comply with the provisions of this paragraph 11. The obligations in this paragraph 11 shall not apply to any information to the extent that such information:

* (a) is publicly available or becomes publicly available through no act or omission of the receiving party; or
* (b) is required to be disclosed by law or by order of a court of competent jurisdiction or other competent authority, including in the event that a feedback report indicates that a colleague may have a serious concern about a doctor’s performance or behaviour that could compromise patient safety, we may, on the request of the Responsible Officer, be obliged to provide the identity of said colleague in line with paragraph 25 of the Good Medical Practice Guide (2013).

The provisions of this paragraph 11 shall survive any termination of a contract. We agree that reports on individuals and teams, individual and team psychometric reports and/or data sheets, and all written and oral communications naming individuals constitute confidential information which shall remain confidentially perpetually.

13. Release of reports

Edgecumbe will endorse the release of reports under the following conditions:

* The relevant self-assessment has been completed by the doctor
* Feedback from a minimum of 6 Peers and 6 Support/Junior colleagues has been collected for the colleague report
* Feedback from a minimum of 17 patients has been returned with a signed Patient Feedback Declaration Form for the patient report

We will upload a maximum of 50 patient questionnaires: further questionnaires can be uploaded for an additional charge, based on the data entry time taken.

Exceptions to these conditions will require written consent from the doctor’s Responsible Officer to release the report with feedback below the minimum requirements\*. The doctor using this product understands that in this situation, Edgecumbe cannot confirm that the report achieves the generally accepted requisite level of reliability for medical appraisal. Further to this, the doctor using this product understands that once a Doctor 360 report is released, this will permanently end the feedback session and cannot be reopened to allow the addition of extra feedback responses thereafter.

\*The absolute minimum number of feedback returns that we can accept for releasing a report is 3 Peers, 3 Support/Junior colleagues and 7 Patients.

14. Service materials

For each license used all materials required for collecting feedback will be available from the associated online feedback account, unless an alternative arrangement has been agreed between you and ECG for paper-based patient feedback. Paper packs can be purchased at an additional cost from the Doctor 360 website.

15. Miscellaneous provisions

Assignment and sub-contracting: You may not assign, sub-contract or otherwise dispose of any of your rights or obligations under a contract with us without our prior written consent. We may assign, sub-contract or otherwise dispose of any of our rights or obligations under a contract with you without your consent provided the assignee, sub-contractor, or other party to which the rights and/or obligations are disposed commits in writing to you to continue to be bound by the terms of the contract.

No partnership or agency: Nothing in a contract between you and us shall constitute any partnership or be deemed to have created any relationship of agency, and unless expressly stated neither you nor we shall have the authority to contract on behalf of or otherwise bind the other in any way.

Entire agreement: These Terms and the relevant engagement letter forming a contract shall constitute the entire agreement and understanding in respect of that contract and shall supersede any previous agreements between the parties in connection with its subject matter.

Severability: If any provision of a contract is declared void or unenforceable by any court or other body of competent jurisdiction, or is otherwise rendered so by any applicable law, that provision shall to the extent of such invalidity or unenforceability be deemed severable and all other provisions of that contract not affected by such invalidity or unenforceability shall remain in full force and effect.

Third party rights: Unless expressly stated in a contract, nothing in it shall confer any rights on any person under the Contracts (Rights of Third Parties) Act 1999.

Waiver: If you or we don’t enforce rights under a contract as soon as the right to enforce them arises that does not prevent you or us from enforcing them in the future, or if the rights arise again in different circumstances (for example, if we agree not to charge you a cancellation fee we could charge you on one occasion, that does not mean we can not charge you a cancellation fee in the future). The rights and remedies provided in a contract are cumulative and are additional to any rights or remedies provided by law.

Variation: No variation to a contract shall be effective unless made in writing and signed by authorised representatives of both you and us.

16. Governing law and jurisdiction

These Terms and any contract we enter with you shall be governed by and construed in accordance with the laws of England and Wales, and any disputes arising out of or in connection with these Terms and/or any contract we enter with you shall subject to the following provision be subject to the jurisdiction of the English courts. Nothing in this paragraph shall limit our right to take proceedings against you in any other court of competent jurisdiction in the jurisdiction in which you are incorporated or have any trading presence, nor shall our taking proceedings in any one or more jurisdictions preclude us taking proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction. You may not bring proceedings against us other than in the English courts. We are a company that welcomes feedback – if you can provide us with any comments on our service, please contact us on [01173 328 277](tel:01173328277) or email us on [support@edgecumbe.co.uk](mailto:support@edgecumbe.co.uk)

17. Copyright

The contents of the Edgecumbe Group websites (www.edgecumbe.co.uk, www.edgecumbehealth.co.uk, www.edgecumbeconsulting.co.uk, www.employesurveys.co.uk and www.doctor360.co.uk) are protected by copyright: ©2019 Edgecumbe Consulting Group Limited and/or its agents, clients and suppliers. Reproduction of part or all of the Edgecumbe Consulting Group Limited websites is prohibited other than in accordance with this notice. All rights are reserved.

18. Use of content

We grant you the non-exclusive right to use material from the Edgecumbe Consulting Group Limited websites provided that:

* the material is copied solely for educational and personal use and will not be copied or posted on any network, computer, web site or publication or broadcast in any media or distributed by any means for any commercial purpose whatsoever;
* the material shall not be amended or modified in any way; and
* the copyright notice originally included in the material shall appear on all copies

Testimonials and feedback comments are from clients who wish to remain anonymous due to the nature of 360 feedback and data protection.

19. Other websites

We cannot accept responsibility for any other website which you may access through the Edgecumbe Consulting Group Limited websites. Such links are provided only for convenience and we cannot endorse or accept any responsibility for the contents or the use of any such websites. We also disclaim any responsibility for any views which may be expressed on the Edgecumbe Consulting Group Limited websites or on any websites which may be linked to the Edgecumbe Consulting Group Limited websites.

20. Disclaimer

We do our best to ensure that information on the Edgecumbe Consulting Group Limited websites is correct, but we do not accept any liability whatsoever for its content or for errors or omissions.

We cannot guarantee that everything on the Edgecumbe Consulting Group Limited websites is free from viruses or defects and assume no responsibility whatsoever for any damage to visitors’ computers or any other equipment.

Information on the Edgecumbe Consulting Group Limited websites is provided “as is” without any warranties of any kind. To the fullest extent permitted by law, we and our suppliers exclude all warranties, including, without limitation, warranties of merchantability, non-infringement of third-party rights and fitness for a particular purpose. We and our suppliers make no warranties about the accuracy, reliability, completeness or timeliness of the material, information, services, software, text, graphics or links. In no event will we be liable to any party for any damages whether direct, indirect, incidental, special, consequential or other for any use or inability to use the Edgecumbe Consulting Group Limited websites or its contents, or of any hyperlinked website, including, without limitation, any damages for lost profits, business interruption, loss of programs or other data, even if we are expressly advised of the possibility of such damages.

Information on the Edgecumbe Consulting Group Limited websites may contain technical inaccuracies or typographical errors. The information contained on the Edgecumbe Consulting Group Limited websites may be changed at any time without prior notification to you.

21. Privacy policy

If you give us personal information in order to receive information from us, we collect and store that information. That information enables us to fulfil your information request. If you review or download information, we track the visit. That information is helpful, amongst other things, to provide you with tailored information and to give us information about your use of the Edgecumbe Consulting Group Limited websites.

If you elect to pay for services using the Stripe system (i.e. you elect to pay by credit/debit card), by doing so you accept the terms of their privacy policy, which you can view [here](https://stripe.com/gb/privacy), Stripe Inc.

Information submitted via the Edgecumbe Consulting Group Limited websites will not be passed on to any other organisation.

22. English law & refund policy

These terms and your use of the Edgecumbe Consulting Group Limited websites shall be governed by and in accordance with English law. If any provision of these exclusions and disclaimers shall be unlawful, void or for any reason unenforceable then that provision shall be deemed severable and shall not affect the validity and enforceability of the remaining provisions.

If you are an individual who has purchased Dr 360 via the website/invoice.

By your consumer rights you are entitled to a full refund under the following conditions:

* Feedback services have not yet been made use of, including any use of the online feedback account and the sending of a patient feedback pack;
* The refund is requested in writing, within 7 working days of the Doctor 360 feedback account being activated

We are a company that welcomes feedback – if you can provide us with any comments on our service, please contact us on **0117 3328277** or email us on **support@edgecumbe.co.uk**